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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 8th December, 1969:—

BILL No. 104 OF 1969

A Bill further to amend the Foreign Exchange Regulation Act, 1947.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1969.

Amendment of section 12.

7 of 1947.

2. In section 12 of the Foreign Exchange Regulation Act, 1947 (hereinafter referred to as the principal Act), for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) The Central Government may, by notification in the Official Gazette, prohibit the taking or sending out by land, sea or air (hereafter in this section referred to as export) of all goods or of any goods or class of goods specified in the notification from India directly or indirectly to any place so specified unless the exporter furnishes to the prescribed authority a declaration in the prescribed

form supported by such evidence as may be prescribed or so specified and true in all material particulars which, among others, shall include the amount representing—

(*i*) the full export value of the goods; or

(*ii*) if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in the course of international trade,

and affirms in the said declaration that the full export value of the goods (whether ascertainable at the time of export or not) has been, or will within the prescribed period be, paid in the prescribed manner.".

Amendment of section 23A.

3. In section 23A of the principal Act, for the words, brackets and figures "the restrictions imposed by sub-sections (*1*) and (*2*) of section 8", the words, brackets and figures "the restrictions imposed by or under sub-sections (*1*) and (*2*) of section 8" shall be substituted.

Repeal and saving.

4. (*1*) The Foreign Exchange Regulation (Amendment) Ordinance, 1969 is hereby repealed. 9 of 1969.

(*2*) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act as if this Act had come into force on the 13th day of November, 1969.

STATEMENT OF OBJECTS AND REASONS

Sub-section (*1*) of section 12 of the Foreign Exchange Regulation Act, 1947 empowers the Central Government to issue a notification prohibiting the export from India of any goods or class of goods specified in the notification to any place unless a declaration supported by such evidence as may be prescribed, is furnished by the exporter to the prescribed authorities that the amount representing the full export value of the goods has been or will, within the prescribed period, be paid in the prescribed manner. Accordingly, some notifications have been issued imposing a general prohibition with certain exceptions. The requisite rules relating to the declarations have also been framed. Section 23A of the Act provides that any restriction imposed by sub-section (*1*) of section 12 of the Act, shall be deemed to have been imposed under section 11 of the Customs Act, 1962 and all the provisions of the said Customs Act shall have effect accordingly. On this basis, officers of Customs were detaining goods intended for export wherein the full export value had not been correctly stated in the declaration.

2. All along the view held by officers of Customs supported by certain decisions of the High Courts has been that the Act and the notification imposed upon the exporter an obligation to specify in the declaration the true full export value of the goods and that in the event of his failure to make a true declaration, the prohibition of export imposed by the notification would operate. It was thus assumed that if the exporter fails to make a correct declaration of the full export value, it was open to the Customs Authorities to seize the goods in respect of which such an erroneous declaration has been made and to take steps for the confiscation of the goods and the imposition of a penalty.

3. However, in the case of *Union of India* Vs. *Rai Bahadur Shree Ram Durga Prasad (Private) Limited*, the Supreme Court held that the declaration required by section 12(*1*) of the Act is only to the effect that the amount representing the full export value of the goods has been or will, within the prescribed period, be paid in the prescribed manner. In the case of mis-declaration of the full export value, it was held by the Court that it was not open to the Customs Authorities to take any action against the goods, though the exporter would be liable to be proceeded against under section 23 of the Act for making a false declaration. An attempt was made to persuade the Supreme Court to reconsider this decision but in a recent judgment in the case of *McLeod and Co.* vs. *Union of India* the Court declined to reconsider its earlier decision in this regard.

4. With a view to preventing under-invoicing, it was necessary to amend the Act so as to restore to the Customs Authorities powers which they were believed to possess prior to the aforesaid judgment of the Supreme Court. As Parliament was not in session, and the checking of under-invoicing called for immediate action, the Foreign Exchange Regu-

lation (Amendment) Ordinance, 1969 (9 of 1969) was promulgated by the President on the 13th November, 1969, amending sections 12 and 23A of the Foreign Exchange Regulation Act, 1947 suitably.

5. The present Bill seeks to replace the aforesaid Ordinance by an Act of Parliament.

NEW DELHI; P. C. SETHI.

The 26th November, 1969.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to substitute a new sub-section for sub-section (*1*) of section 12 of the Foreign Exchange Regulation Act, 1947, and empowers the Central Government to regulate, by notification, the export of all goods or of any goods or class of goods to be specified in the notification. The goods will be specified with due regard to the objects of the Act, in particular, the regulation of dealings in foreign exchange. The declaration which the exporter has to furnish under the sub-section has to be in the form prescribed by the rules made under the Act which will be laid before Parliament. The delegation of legislative power is thus of a normal character.

BILL NO. 107 OF 1969.

A Bill to validate certain provisions contained in the Bihar Land Reforms Act, 1950, and the Bihar Minor Mineral Concession Rules, 1964, and action taken and things done in connection therewith.

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Bihar Land Reforms Laws (Regulating Mines and Minerals) Validation Act, 1969.

Validation of certain Bihar State laws and action taken and things done

2. (*1*) The laws specified in the Schedule shall be, and shall be deemed always to have been, as valid as if the provisions contained therein had been enacted by Parliament.

(*2*) Notwithstanding any judgment, decree or order of any court, all action taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued and rents or royalties realised under any such laws shall be deemed to have been validly taken, done, made, issued or realised, as the case may be, as if this section had been in force at all material times when such action was taken, things, were

done, rules were made, notifications were issued, or rents or royalties were realised, and no suit or other proceeding shall be maintained or continued in any court for the refund of rents or royalties realised under any such laws. connected therewith.

(3) For the removal of doubts, it is hereby declared that nothing in sub-section (2) shall be construed as preventing any person from claiming refund of any rents or royalties paid by him in excess of the amount due from him under any such laws.

THE SCHEDULE

(*See* section 2)

1. Section 10 of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), as amended by the Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act IV of 1965) and by the Bihar Land Reforms (Amendment) Act, 1965 (Bihar Act VI of 1965).

2. Section 10-A of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), as inserted by the Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act IV of 1965).

3. Section 31 of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), as amended by the Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act IV of 1965) and by the Bihar Land Reforms (Amendment) Act, 1965 (Bihar Act VI of 1965).

4 Sub-rule (2) of Rule 20 of the Bihar Minor Mineral Concession Rules, 1964, as inserted by the Bihar Minor Mineral Concession (First Amendment) Rules, 1964, published under the Bihar State Government notification No. A|MM-1099|64(Pt.) 7700|M, dated the 19th December, 1964, in the Gazette of Bihar (Pt. II) dated the 30th December, 1964.

STATEMENT OF OBJECTS AND REASONS

The Supreme Court, in Baij Nath Kedia *vs.* State of Bihar (C.A. No. 685 of 1967), by their judgment dated 28-8-1969 have, *inter alia,* held that—

(*a*) to the extent of the topics covered by the Parliamentary legislation [the Mines and Minerals (Regulation and Development) Act, 1957] the powers of the State Legislature are excluded;

(*b*) after the creation of statutory mining leases under the provisions of sections 9 and 10 of the Bihar Land Reforms Act, 1950, any attempt to regulate those mining leases will fall not in Entry 18 of the State List but in Entry 54 of the Union List although it touches land and not *vice versa;*

(c) the whole field of regulation and development of minor minerals have been taken over under the control of the Union.

and consequently certain provisions of the Bihar Land Reforms Act, 1950, as amended by the Bihar Land Reforms (Amendment) Act, 1964, and sub-rule (2) of rule 20 of the Bihar Minor Mineral Concession Rules, 1964, as inserted by the Bihar Minor Mineral Concession (First Amendment) Rules, 1964, were struck down.

2. The Government of Bihar have pointed out that, as a result of the aforesaid judgment, the levy and collection of royalty on minor minerals in respect of statutory leases by the State Government under the provisions of the Bihar Minor Mineral Concession Rules, 1964, have not only become void but they may also be required to refund royalty collected by them on minor minerals in respect of those leases which runs into a few crores of rupees. It is also likely that as a result of the general principles laid down in the said judgment, the proceedings initiated by the State Government to resume un-worked statutory lease-holds under section 10(2) of the Bihar Land Reforms Act, 1950, as amended by the Bihar Land Reforms (Amendment) Act, 1965, may be challenged.

3. Since in view of the aforesaid judgment of the Supreme Court it is Parliament which is competent to frame legislation in regard to matters referred to in paragraph 1 above, the Bill seeks to re-enact and validate the provisions of the State laws specified in the Schedule to the Bill.

NEW DELHI;
The 27th November, 1969.

JAGANATH RAO.

S. L. SHAKDHER,
Secretary.

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